IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 6788 of 1999(G)

PETITIONER:
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1. K.C.JOHN AND SONS, RATION WHOLESALE DEPOT NO.1, KURUPPANTHARA, REP. BY ITS PARTNER K.J.THOMAS, MANJOOR P.O., 686606(AWD NO.21).

2. K.C.JAMES, ARD 142, KANDARAPALLIL HOUSE, MUTHICHIRA P.O., KOTTAYAM.

BY ADV. SRI.M.V.BOSE

RESPONDENTS:
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1. STATE OF KERALA, REP. BY ITS SECRETARY, FOOD AND CIVIL SUPPLIES DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. DIRECTOR OF CIVIL SUPPLIES, TRIVANDRUM.

3. DISTRICT SUPPLY OFFICER, KOTTAYAM.

4. TALUK SUPPLY OFFICER, VAIKOM.

5. CHAIRMAN, KERALA HEADLOAD WORKERS' WELFARE FUND KOTTAYAM LOCAL COMMITTEE, KOTTAYAM.

R1 TO 4 BY G.P. SMT.SMITHA
R5 BY ADV. SRI.RENIL ANTO, SC FOR KHWWB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, ALONG WITH OP NO. 10612 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.11488/1999 IN O.P. NO.6788/1999

DISMISSED:

28.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE CPY OF AUTHORISATION BY THE DEALERS TO FILE ORIGINAL PETITION BEFORE THE HON'BLE HIGH COURT, IN FAVOUR OF THE PETITIONERS.

P2: TRUE COPY OF APPLICATION FOR REGISTRATION AS EMPLOYER TO REGISTER AS EMPLOYERS IN THE LOCAL COMMITTEE OF THE KERALA HEADLOAD WORKERS WELFARE BOARD.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. Nos.6788 & 10612 of 1999

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Dated this the 28th day of March, 2007.

JUDGMENT

The O.Ps. are filed by wholesale and retail dealers of ration articles for a declaration that they do not come within the description of "employer" under the Kerala Headload Workers Act. There is also controversy between the retailers and wholesalers as to who is liable as employer between them.

2. I heard counsel for the petitioners, Government Pleader and Standing Counsel appearing for the Headload Workers Welfare Board. The exact nature of distribution and sale of ration articles are not furnished in court. However, goods originate from F.C.I. and are distributed by Kerala Civil Supplies Corporation through wholesalers to retailers who in turn sell to the ration card holders. "Employer" is defined under Section 2(i) of the Act as follows:

> "S.2(i) "Employer" means,-
>
> (i) in relation to a headload worker engaged by or through a contractor, the principal employer;
>
> (ii) in relation to a headload worker who is not employed or engaged by an employer or contractor, the Committee appointed under S.18.
>
> Explanation:- For the purpose of this sub-clause "headload

> worker" means a person registered as headload worker under the Scheme, and whose wages are paid by the employer or contractor through the Committee concerned.
>
> (iii) in relation to any other headload worker, the person who has ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or by any other name prevailing in such establishment."

From the above it is clear that definition is a relative one and any person who engages a headload worker to load and unload goods in an establishment under his control will be the employer for such worker. Needless to mention that so far as wholesalers are concerned, wholesale depots including godowns are under the control of such wholesale dealers. Therefore, for workers engaged for loading and unloading of goods by the wholesalers such wholesalers will be liable as employer in relation to such headload workers engaged by them. The position is same for retail dealers in respect of workers engaged for loading and unloading of goods in their ration shops and godowns under their control. Therefore, both wholesalers and retailers answer the description of "employer" under the above definition. In other words, for headload workers engaged by them for loading and unloading of goods in their godowns, the respective wholesaler or retail dealer will be liable as employer and all consequences including

Welfare Fund contribution will be payable by them in their capacity as employers.

3. There is no need to go into other issues raised such as recovery and payment of contribution to Welfare Fund which the Welfare Fund Board is free to collect and for failure, to take coercive steps under the Act. The O.Ps. are accordingly disposed of holding that both retailers and wholesalers are "employers" in respect of headload workers engaged by them for loading and unloading work.

C.N.RAMACHANDRAN NAIR
Judge

pms